



**DRAFT MINUTES
CITY OF SCOTTSDALE
CHARTER REVIEW TASK FORCE**

MONDAY, MAY 16, 2010

**CITY HALL KIVA
3939 N. DRINKWATER BOULEVARD
SCOTTSDALE, AZ 85251**

PRESENT: Steven J. Twist, Chair
Susan Bitter Smith
Jim Derouin
Cindi Eberhardt
Charlie Smith

BY PHONE: Lisa Johnson Stone

ABSENT: Alan Kaufman

STAFF: Carolyn Jagger, City Clerk
Sherry Scott, Deputy City Attorney
Brent Stockwell, Senior Advisor

Call to Order/Roll Call

Chairman Twist called the Charter Review Task Force regular meeting to order at 5:00 p.m.
Lisa Johnson Stone joined the meeting telephonically at 5:17 p.m.

Roll call confirmed the presence of Task Force members as noted.

1. Approval of Minutes from the April 20, 2010 Meeting

MOTION AND VOTE:

CINDI EBERHARDT MOVED TO APPROVE THE MINUTES FROM THE APRIL 20, 2010 MEETING. IT WAS SECONDED BY CHARLIE SMITH. MOTION PASSED 5-0 (LISA JOHNSON STONE HAD NOT YET JOINED THE MEETING.)

2. Public Comment – *there was no public comment.*

3. Discussion and review of Task Force Recommendation A3 relating to subsidies, to determine whether additional changes are recommended, including, but not limited to, the following additional underlined amendments to Article 1, Section

Chairman Twist referenced footnote four of the Turken decision from the Arizona Supreme Court, and explained the background for developing an amendment to the language the Task Force is proposing to Council in their final report.

DISCUSSION: There was extensive discussion and clarification on the language and need for this amendment.

Sherry Scott, Assistant City Attorney, explained that the issue was not previously identified or discussed by the Task Force. Ms. Scott explained that they realized there are agreements and programs the city enters into with non-profits that are not administrated by contracts, such as taxi vouchers, emergency utility bill assistance, and emergency housing assistance. Ms. Scott explained that the language the Task Force previously proposed might prohibit the city from participating in these kinds of direct human services programs, even in a pass-through situation.

Cindi Eberhardt said she appreciates that Sherry Scott brought this issue back to the Task Force, stating that the Turken decision was a very long awaited, comprehensive decision that impacts many things. We are now using this decision to further clarify how we operate the gift clause in the city. She believes this amendment further narrows the scope of authority of the council with regard to pass-through funds and she is very concerned about amending our charter with this language before considering all of the challenges that could come forward. Ms. Eberhardt stated that she believes this amendment is not appropriate to put into our charter because there is no way we could consider all the issues or consequences that arise from proposing this amendment.

Susan Bitter Smith stated she believes the Task Force has already asked this question and the answer was that it was appropriate if there was a clearly identified public purpose. She does not believe we need to make this change to the report.

Chairman Twist stated there are two tests used to determine this: 1) is it a public purpose, and 2) is the City getting substantial consideration. Chairman Twist recalls that the Turken decision states the court will give a lot of deference to the City and the Council's determination of the decision.

Cindi Eberhardt asked how this would affect the transit costs reduction and the City's ability to subsidize the trolley or transit programs.

Sherry Scott stated that the cab connection, taxi voucher program could be called into question. The Trolley program would need to be researched before making a determination.

Brent Stockwell clarified that with the taxi voucher program, the City is reimbursing the cab company for the ride provided to the citizen, the City is not providing direct assistance to the citizen.

Susan Bitter Smith stated that she is reluctant to play with the language on this issue at the eleventh hour, but rather prefers they allow the Council to debate the issue and make a decision at tomorrow's meeting.

Jim Derouin asked Sherry Scott if there is a contract with the trolley company, stating that if there is, you immediately slide into the contract analysis referenced under Turken, which is direct consideration. This means it is going to meet the standard we have set forth here.

Sherry Scott agreed and thinks the trolley contract would meet the language. She explained that direct consideration is a contractual term, as set forth in the Turken decision, and we don't always have a contract in place with a citizen. She further stated that she's not sure that the City would be receiving direct consideration with that citizen, and she encourages the Task Force to have this discussion.

Jim Derouin asked Sherry Scott to further clarify her point and opinion on the proposed amendment. Ms. Scott stated she believes the Task Force did not intend to call those programs (cab vouchers, utility bill and housing assistance) into question when it acted on February 1st, but because the Task Force did not specifically discuss those programs, she believes that it is good for the Task Force to discuss it and state what it does and does not intend to include. Ms. Scott further explained that when the City is providing assistance directly to citizens, she is uncertain how it will be proven that the City receives direct consideration back with no contract in place.

Jim Derouin got clarification from Susan Bitter Smith confirming that she believes the Turken decision really relates to contractual situations rather than non-contractual situations.

Charlie Smith stated that the amendment is not really the Turken decision but rather the decision with our embellishment. Chairman Twist stated that the amendment is consistent with an interpretation of Turken decision.

Charlie Smith stated he is opposed to proposing the amendment to the Council. He does not want to see the City, through its charter, locked into doing something a certain way while the rest of the world goes in another direction in the years to come.

Chairman Twist stated that it is not really a question of how the law is going to evolve, but rather is it ever right for the City to give its finances when it does not get substantial, equal consideration? He believes that is a policy question.

Charlie Smith stated he would prefer to trust our elected public officials to adopt guidelines and deal with those issues as they come up rather than memorializing this for ten years in the City's charter. Mr. Smith thinks it's wrong to memorialize a majority of the Task Force's perception in a very gray area that will be unwound in case after case over the next few years.

Chairman Twist stated that one might then argue that what is the point of having a charter at all unless it is to give those policy makers guidelines of what the fundamentally important principles of the City are.

Jim Derouin stated that if this City had a history of asking the public whether they should give away money by asking them to vote on it, he would have a different opinion on this issue, but the policy and practice has been not to ask the public in Scottsdale. The reason that he proposed this three years ago and it came back this time, with Turken intervening, was to give the public at long last a decision and a standard as to how they give their tax dollars away. This amendment is giving the public an opportunity to establish a standard for the City of Scottsdale. With respect to this added language, Mr. Derouin said that if the City Attorney's office thinks it's not needed, then that's fine, but he doesn't want to hear an argument later about it killing taxi

vouchers and utility billing voucher programs. Mr. Derouin stated that we are really dealing with charitable programs here, not trolley programs, which are contractual.

Charlie Smith stated that he does not have a problem with the amendment as it relates to Nordstrom. He explained that he's spent a lot of his public service life working with non-profits and that the City of Scottsdale has a rich history of cooperating with non-profit organizations to provide needed services for the community. We are really putting a burden of proof on non-profits like the Boys Clubs, etc. Mr. Smith stated that he can readily think of ten contracts where determining if they are substantially equal will be challenging.

Jim Derouin explained that meeting the standard is a relatively simple thing, as required by the Supreme Court. For him, it is a relatively simple process to do. He does not think this amendment threatens any of this, but stated that we have to understand that non-profit is a big term, which incorporates many entities, including multi-million dollar corporations. It is the lowest people on the totem pole that are not covered by contracts and this would protect them.

Charlie Smith stated that he is not asking that the Task Force do anything that the Turken decision does not ask them to do. He explained that all he is asking is that the non-profits in Scottsdale are held to the same standards that the non-profits in other cities across the State of Arizona are; not held to a *higher* standard.

Chairman Twist explained that the language in the amendment looks at both sides of the equation, not just the standards that the non-profits are held to, but also the protection that the taxpayers are entitled to.

MOTION: JIM DEROUIN MOVED THE PROPOSED BE APPROVED TO READ AS FOLLOWS: THE CITY SHALL NOT GIVE OR LOAN ITS CREDIT IN AID OF, NOR MAKE ANY DONATION, GRANT OR PAYMENT OF ANY PUBLIC FUNDS, BY SUBSIDY OR OTHERWISE, TO ANY INDIVIDUAL, ASSOCIATION, OR CORPORATION, EXCEPT WHERE THERE IS A CLEARLY IDENTIFIED PUBLIC PURPOSE AND THE CITY EITHER RECEIVES DIRECT CONSIDERATION SUBSTANTIALLY EQUAL TO ITS EXPENDITURE OR PROVIDES DIRECT ASSISTANCE TO THE NEEDY. MOTION FAILED FOR LACK OF SECOND.

4. Discussion regarding the content and presentation of Task Force recommendations and final report to the City Council at the May 18, 2010 Regular Council Meeting.

Chairman Twist will present the final report to the City Council at tomorrow night's City Council meeting. He will present the background and what the record shows was support and opposition to the articles. He will try to do a faithful job of presenting both sides of the issues but the Task Force members are invited to make remarks, as well.

With no further business to discuss, the meeting adjourned at 5:48 p.m.

SUBMITTED BY:

Linda Pellegrini
Administrative Secretary

REVIEWED BY:

Brent Stockwell
Senior Advisor